STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 99-467

September 29 , 1999

CENTRAL MAINE POWER COMPANY
Request for Approval of Location of
Easements by Eminent Domain over
Six Parcels of Land in Oxford County

ORDER

I. SUMMARY

We find that Central Maine Power Company's (CMP) proposed transmission line in Oxford County will be electric utility property, enabling CMP to take property by eminent domain in accordance with 35-A M.R.S.A. § 3136. CMP agrees to restrict its easement to uses necessary for the transmission of electric energy, rendering moot the landowner-intervenors' request to deny CMP's taking for uses pertaining to communications. We deny the landowner-intervenors' request for a reverter clause in the event the Rumford Power Associates' generating facility is not built or otherwise fails to connect to the transmission system. We therefore approve the location of the taking by eminent domain proposed by CMP.

II. STATEMENT OF THE CASE AND POSITION OF THE PARTIES

In Docket No. 98-863, the Commission granted CMP a certificate of public convenience and necessity to build a new transmission line to connect the Rumford Power Associates (RPA) generating facility in Rumford, Maine to CMP's transmission system. The certificate authorized CMP to build a transmission line designated as section 217; a new 115 kV transmission line from the new Rumford Industrial Park substation in Rumford to the existing Kimball Road substation in Harrison, Maine. The proposed section 217 will be built for the most part on the west side of and parallel to the existing transmission line corridor for existing sections 210 and 211.

CMP now seeks to take and hold by eminent domain easements over six parcels of land where section 217 will be located. By 35-A M.R.S.A. § 3136, the location to be taken by eminent domain for such transmission lines must be approved by the Commission. This proceeding was initiated when CMP petitioned for approval of the location of easements by eminent domain on the six parcels of land.

Three of the parcels of land are owned by Mary E. Cullinan, individually or as trustee of the John P. Cullinan marital trust. Two of the parcels are owned by A. Bartlett Hague and Mary Ann Whitehead Hague. The remaining parcel of land is owned by Arthur C. Sanderson and David W. Sanderson. All of the landowners sought and were granted intervenor status, and are represented by the same attorney. The Public Advocate also interevened in the proceeding.

After discovery and technical conferences, the issues in dispute were narrowed and then briefed by all parties. The landowner-intervenors contend that amendments to Title 35-A resulting from the Electric Restructuring Act define the section 217 line to be non-utility property, thereby removing the property from the classification for which CMP possesses eminent domain rights. As such, in the landowners' view, the Commission lacks the jurisdiction to approve the location of the line for eminent domain purposes. The landowners further argue that, even if the Restructuring Act does not remove the section 217 line from the definition of utility property, the Commission should not approve a location that includes a permitted use in the easement for communications, as CMP's proposed easement deed provides. Lastly, the landowners believe any Commission approval should be conditioned upon the inclusion in the easement deeds of a reverter clause, requiring CMP to abandon the easement and remove any structures in the event that the RPA facility is not built or is removed from service.

CMP responds that it will become a transmission and distribution utility under the Restructuring Act, and as such, property owned by CMP will remain electric utility property. Thus, according to CMP, it retains the right to take the easements by eminent domain and the Commission retains the jurisdiction to approve the location of the taking. CMP agrees to limit its easements to uses related to transmitting electric energy, including transmitting intelligence or other data used to assist the transmission of electric energy on those lines. CMP disagrees that a reverter clause is either necessary or proper.

III. MOTION TO DISMISS

In their exceptions to the Examiner's Report, the landowners urge the Commission to dismiss CMP's petition until negotiations between CMP and the landowners reach an impasse, alleging that CMP had not negotiated sufficiently to determine that the dispute was ripe for Commission intervention. The landowners did not raise such an argument by the deadline established for the landowners to state their objections to CMP's petition. Neither did the landowners raise such an issue in their brief or reply brief.[1] We are not certain that an eminent domain approval request should ever be dismissed due to insufficient efforts at settlement negotiations. In any event, we are not willing to dismiss CMP's petition in this case because the issue was not timely developed. As the landowners did not seek dismissal until exceptions to the Examiner's Report, CMP did not have an opportunity to respond to their arguments. We therefore deny the landowners' motion to dismiss.

[1] We realize that in letters filed as petitions to intervene, some of the landowners complained that CMP prematurely terminated negotiations. However, the landowners did not pursue the issue in the litigation of the case before the Commission.

IV. DECISION

By the Electric Restructuring Act, the Legislature removed the generation of electricity function from utility regulation, effective March 1, 2000. In conjunction with the deregulation of generation in the year 2000, the Legislature excluded from the definition of electric plant certain generation plant that might be built or acquired in anticipation of the deregulation of the generation function. Generation assets used to sell electricity at wholesale or at retail to consumers for delivery outside of Maine will no longer be "electric plant." P.L. 1997, c. 710, § 2, *enacting* 35-A M.R.S.A. § 102(6-A) (the 1998 Amendment). By this amendment, electric utilities could sell their generation assets prior to March 1, 2000 without requiring the purchaser of those assets to become a public utility by virtue of any sales of the output of those assets. This amendment also permitted projects such as the RPA facility to be constructed and begin producing electricity before March 1, 2000 without becoming a public utility prior to March 1, 2000. All parties agree that the RPA generating facility will be "excluded electric plant" and that RPA will not become an electric utility.

However, in defining "excluded electric plant", the Legislature includes

> any related interconnecting transmission or distribution facilities used <u>for the purpose of connecting one or more generation assets to transmission or distribution plant</u> … .

35-A M.R.S.A. § 102(6-A). The landowners argue that the section 217 transmission line is such a "related interconnecting transmission facility," used to connect the RPA generation asset to the transmission system. If the property is excluded from electric plant, CMP cannot use eminent domain to acquire the property and the Commission has no jurisdiction to approve the taking.

Reading the sentence cited by the landowners in isolation, one could see some ambiguity in the question of whether the section 217 transmission line should be classified as interrelated connecting facilities of a generator or the transmission plant of a utility to which the generator becomes interconnected. The Legislature, however, included other language in the 1998 amendment which resolves the ambiguity as to the dividing line between the generator including "related interconnecting facilities" and the public utility transmission network. The last sentence of section 102(6-A) provides that

> prior to March 1, 2000, "excluded electric plant" does not include electric plant owned … by an entity that was regulated by the Commission as an electric utility before September 19, 1997 … .

It is clear that the section 217 transmission line fits the exclusion from "excluded electric plant" because the line will be owned, operated and managed by CMP, an entity that was regulated by the Commission as an electric utility before September 19, 1997.

The logic of the entire definitional scheme within section 102(6-A) is clear. Any generation plant requires some electric wires in order to transmit the electricity generated from the plant to the public utility transmission grid, wires that likely will be owned by generation plant owners. The wires that transmit the electricity from the plant to the utility substation are "interrelated interconnecting facilities" and are not under the statute, defined as transmission plant, which would turn generating plant owners into tranmissison and distribution utilities. In the context of this case, the wires that will be used to transmit electricity from the RPA plant to the Rumford Industrial Park substation constitute related interconnecting facilities, which will become "excluded electric plant." On the other hand, the Rumford Industrial Park substation, and the section 217 transmission line that will connect to the Rumford Industrial Park substation to the transmission grid, do constitute electric plant: those facilities will be owned by an electric utility and thereby convey to CMP the eminent domain rights contained in section 3136.

In response to landowners' objection that CMP sought to acquire an easement for communications purposes not related to the transmission of electric energy, CMP agreed to easement language that limits the easement to the transmission or distribution of electric energy and intelligence related to the electric energy use. In reply, the landowners assert that CMP may not use the easement for the transmission of intelligence or other data for any purpose, even if the intelligence is transmitted as part of or in order to control the transmission of energy.

Section 3136 authorizes CMP to take by right of eminent domain easements necessary for the location of its transmission lines "and of necessary appurtenances … ." CMP currently operates, manages or controls its transmission lines by transmitting intelligence or other data to computer-like facilities within the electric transmission grid. Wires or other equipment necessary to transmit such intelligence or data are necessary appurtenances to the transmission line. To the extent that the transmission of intelligence or other data is necessary for CMP to efficiently operate its transmission line, then CMP may include such equipment within its easement and may put such equipment to the uses necessary to efficiently operate the transmission line.

We will not require CMP to include within its easement deeds the reverter clause requested by the landowners. As discussed above, when section 217 is built, the transmission line will be part of the transmission grid owned by public utilities, regulated by the Federal Energy Regulatory Commission (FERC) and controlled by the independent system operator (ISO) for the public benefit. While the addition of the RPA plant necessitates the addition of section 217 to CMP's transmission grid, any number of changes in the load of Oxford County could cause section 217 to become excess capacity; conversely, other development in Oxford County or elsewhere might justify the continued operation of section 217 even without the RPA plant. It would not be efficient nor practicable to require CMP to remove the section 217 transmission line in the event

that the RPA plant is not completed or shuts down. Property law in Maine may grant certain reversionary rights to the landowners as a grantor of an easement by eminent domain. We do not believe it would be in the public interest to grant the landowners any additional reversionary interest that is tied to the completion or the continued operation of the RPA generating facility.

As there are no other objections or conditions requested concerning the location of the transmission line to be taken by eminent domain, the Commission approves the location of the easements to be taken by eminent domain, such easements to be used for the construction, operation and maintenance of CMP's proposed section 217 transmission line.

Dated at Augusta, Maine, this 29th day of September, 1999.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Diamond

COMMISSIONER ABSENT: Nugent

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.